

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOSEPH L. MARKLAND and)	
KIRSTY MARKLAND,)	
)	
Plaintiffs,)	
)	C.A. No. 09C-01-186 MMJ
v.)	
)	
JOEL POORMAN,)	
)	
Defendant.)	

Submitted: April 1, 2010
Decided: July 13, 2010

On Defendant's Motion for Reargument
DENIED

ORDER

1. On July 22, 2009, the Court denied defendant Joel Poorman's Motion to Dismiss. However, the Court permitted the parties to "engage in limited discovery re: the events leading up to the signing of the two releases and the intentions of the parties in entering into the releases." Following some discovery, defendant filed a motion for summary judgment. At the conclusion of oral argument, the Court denied summary judgment, finding that material issues of fact exist as to the parties' intentions in executing two releases.

2. Defendant moved for reargument of denial of summary judgment.

Defendant argues that the releases were not ambiguous. Therefore, the Court should not look beyond the contractual language to determine the parties' intentions. Additionally, defendant urges the Court to consider its ruling maintaining the *status quo* of funds already paid to plaintiff Joseph L. Markland by defendant's insurance carrier.

3. Plaintiffs respond that even if a release is clear and unambiguous, the release may be set aside where there is fraud, duress, coercion, or mutual mistake concerning the existence or extent of the plaintiff's injuries.¹ Further, plaintiffs argue that notations on the releases create ambiguity.

4. The purpose of reargument is to permit reconsideration of findings of fact, conclusions of law, or judgment of law.² Reargument usually will be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or the facts in a manner affecting the outcome of the decision. "A motion

¹*Reason v. Lewis*, 260 A.2d 708, 709 (Del. 1969).

²*Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del.1969).

for reargument should not be used merely to rehash the arguments already decided by the court.”³

5. In the Motion for Reargument, defendant failed to demonstrate that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it misapprehended the law or the facts in a manner affecting the outcome of the decision. The substance of all arguments set forth in the Motion for Reargument were considered by the Court during oral argument on the summary judgment motion.

THEREFORE, Defendant’s Motion for Reargument is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Mary M Johnston
The Honorable Mary M. Johnston

³*Wilmington Trust Co. v. Nix*, 2002 WL 356371 (Del Super.); *Whitsett v. Capital School District*, Del. Super., C.A. No. 97C-04-032, Vaughn, J. (Jan. 28, 1999); *Monsanto Co. v. Aetna Casualty & Surety Co.*, Del. Super., C.A. No. 88-JA-118, Ridgeley, P.J. (Jan. 14, 1994).